IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 103 of 2007
In
SPECIAL CIVIL APPLICATION No. 6230 of 2004
With
CIVIL APPLICATION No. 1368 of 2007
In LETTERS PATENT APPEAL No. 103 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA
HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHIEF OFFICER - Appellant(s)
Versus
AMAR GUJARAT SHRAMJIVI SANGH & 1 - Respondent(s)

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Appearance :
MR DEEPAK P SANCHELA for Appellant(s) : 1,
RULE SERVED for Respondent(s) : 1,
MRS PC FERNANDEZ for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

and

HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 01/08/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.M.KAPADIA)

1. By instant intra-court appeal under clause 15 of the Letters Patent, the appellant/original petitioner – the Chief Officer, Mangrol Municipality ('the employer' for short) seeks to challenge the judgment and order dated 27.7.2006 rendered in Special Civil Application No. 6230 of 2004 by the learned Single Judge by which the prayer to issue a writ of certiorari or any other writ, order or direction quashing and setting aside the judgment and award dated 11.3.2004 passed by the President, Labour Court No.2, Junagadh in Reference (LCD) No. 33/2002, by which the employer was directed to reinstate the respondent ('the workman' for short) with continuity of service and with all consequential benefits, has been refused and thereby the petition filed by the employer under Article 227 of the Constitution of India has been disposed of and rule has been discharged.

2. As per the case of the employer, the workman was appointed as a Clerk on daily wages with effect from 25.10.1996 and till the date of filing of the petition he was working as daily wager with the employer. From the date of his initial appointment as daily wager, the workman was working with the employer in different branches. The workman, through the Union, approached the office of the Deputy Labour Commissioner, Saurashtra-Kachchh requesting him to refer the dispute as to whether the workman is to be paid arrears of salary and other available benefits as per the salary and benefits given to the permanent employees as he has completed service of more than 240 days. The Deputy Labour Commissioner, Saurashtra-Kachchh by order dated 30.9.2002 referred the dispute to the Labour Court, Junagadh under Section 10 (1) of the Industrial Disputes Act, 1947 for deciding the same in accordance with law. The said dispute was registered as Reference (LCD) No.33 of 2002 in

the Labour Court, Junagadh.

2.1. The workman submitted the statement of claims, Ex.3, and the employer submitted the reply at Ex.6. The Labour Court after recording evidence and hearing the parties, passed judgment and award dated 11.3.2002 in favour of the workman, directing the employer to consider the service of the workman to be continuous on his original post from the date he had completed 240 days in service and make his service permanent. It was ordered that all benefits to which a permanent employee is entitled be paid to him with effect from 1.1.2004.

3. Aggrieved thereby the employer filed Special Civil Application No. 6230 of 2004 and claimed the relief to quash and set aside the award dated 11.3.2004 passed by the President of Labour Court, Junagadh in Reference (LCD) No.33 of 2002 which was impugned before the learned Single Judge in the petition. The learned Single

Judge, after hearing the learned advocates for the parties and considering the evidence on record, came to the conclusion that there is is no infirmity in the order passed by the Labour Court and since the Labour Court has not committed any error, no interference is required by the Court while exercising the power under Article 227 of the Constitution of India. The learned Single Judge has also observed that the finding recorded by the Labour Court is not contrary to the record. On these findings, the learned Single Judge disposed of the petition by discharging rule issued therein and also directed the employer to implement the award and grant the benefit to the workman as early as possible, preferably within a period of six months from the date of receiving the copy of the order, which has given rise to instant intra-court appeal at the instance of the employer.

4. This appeal was admitted and in Civil Application rule has been issued vide order dated

3.4.2007.

5. Today when the matter has come up for hearing, Mrs. P.C. Fernandez, learned advocate for the workman, has raised a preliminary objection that the appeal under clause 15 of the Letters Patent is not maintainable against the order of the learned Single Judge rendered in a petition filed under Article 227 of the Constitution. She has also drawn our attention to the prayer clause of Special Civil Application No.6230 of 2004 wherein the prayers to issue writ of certiorari as well as to quash and set aside the award impugned in the petition have been made. She has also drawn our attention to the fact that the employer has chosen to file the petition under Article 227 of the Constitution which can be seen from the cause title of the petition. Therefore, the learned Single Judge has rightly considered the petition as a petition filed under Article 227 of the Constitution and, therefore, this intra-court appeal against the

order passed in a writ petition filed under Article 227 of the Constitution of India is not maintainable.

6. Per contra, Mr. Deepak Sanchela, learned advocate for the employer, has contended that it is true that the employer has filed the petition under Article 227 of the Constitution of India. However, a prayer was made to issue a writ of certiorari and also to quash and set aside the award impugned in the petition and, therefore, according to him, this intra-court appeal is maintainable against the order passed by the learned Single Judge.

7. We have considered the submissions advanced at the bar by the learned advocates for the parties. We have also considered the impugned order passed by the Labour Court as well as the learned Single Judge and the reported decisions of the Supreme Court of India as well as this Court.

8. Since Mrs. Fernandez, learned advocate for the workman, has raised a preliminary objection about the maintainability of the appeal filed under clause 15 of the Letters Patent against the order passed by the learned Single Judge in a petition filed under Article 227 of the Constitution, let us examine as to whether the learned Single Judge has exercised powers either under Article 226 or Article 227 or only under Article 227 of the Constitution of India while deciding the petitions, in light of the reported decisions of the Supreme Court of India as well as this Court.

9. In the case of Kanhaiyalal Agrawal and others v. Factory Manager, Gwalior Sugar Company Limited, (2001) 9 SCC 609, question of maintainability of an appeal filed under clause 15 of the Letters Patent against an order made in a writ petition filed under Articles 226 and 227 of the Constitution challenging the order

passed by the Industrial Tribunal arose before the Supreme Court. While answering the said question, the Supreme Court in para 6 of the judgment noticed that so far as the law on the matter is concerned, as to whether an appeal would lie against an order made in writ petition before the High Court challenging an order of the Labour Court, the Supreme Court in its earlier decision in Lokmat Newspapers (P) Ltd. v. Shankarprasad, (1999) 6 SCC 275 has already stated that if a Single Judge exercises jurisdiction under Article 226, Letters Patent Appeal would be maintainable, but if the jurisdiction is exercised under Article 227 it will not be maintainable with a rider that if the Single Judge of the High Court in considering the petition under Article 226 or Article 227 does not state under which provision he has decided the matter and where the facts justify filing of petition both under Article 226 and Article 227 and a petition so filed is dismissed by the Single Judge on merits, the matter may be

considered in its proper perspective in an appeal. The Supreme Court held as aforesaid in view of the decisions of the Supreme Court in Umaji Keshao Meshram's case (supra), Ratnagiri District Central Cooperative Bank Limited v. Dinkar Kashinath Watve, 1993 Supp (1) SCC 9 and Sushilabai Laxminarayan Mudliyar v. Nihalchand Waghajibhai Shaha, 1993 Supp (1) SCC 11.

10. Similar question arose before a Division Bench of this Court of which one of us (A.M. Kapadia, J.) was a member in the case of Steel Authority of India Limited v. Gujarat Mazdoor Panchayat and another, 2004 (1) GLR 729. In the said case, the Division Bench has considered the question as to when the award of the Industrial Tribunal challenged in a writ petition filed both under Articles 226 and 227 of the Constitution, under what circumstances the petition taken to have been filed only under Article 227 of the Constitution of India. The Division Bench has made pertinent observations in paragraph 34 of

the reported decision as under:

> “.....It is now well established that the award of the Tribunal can be challenged by an aggrieved party, both under Art.226 or 227 of the Constitution or under both the Articles. However, choice is with the aggrieved party. Whether aggrieved party has chosen to approach the High Court under Art.226 or 227 has to be ascertained not only from the pleadings, but also from the facts, whether the Tribunal whose award is challenged is impleaded as one of the necessary parties in the petition. In Udit Narain Singh Malpaharia (supra) the Supreme Court has ruled that the Tribunal is not a necessary party where the petition is filed under Art.227 of the Constitution, but the Tribunal is a necessary party if the petition is filed under Art.226 of the Constitution and appropriate reliefs are claimed. Here, in instant case, the petitioner has not impleaded the Industrial Tribunal as one of the respondents in the petition nor claimed any relief as such

against the Industrial Tribunal. This conduct on the part of the writ petitioner in not impleading the Industrial Tribunal as one of the respondents in the petition and in not claiming any specific relief against the Tribunal would indicate that the writ petitioner has chosen to approach the High Court under Art.227 of the Constitution....”

11. Applying the principles laid down by the Supreme Court as well as this Court in the above referred to two judgments to the facts of the instant case, admittedly the employer has filed the petition by labelling it as a petition under Article 227 of the Constitution and, therefore, obviously the learned Single Judge has treated the petition as a petition under Article 227 of the Constitution of India. Besides this, from the perusal of the prayers made in the petition, it is seen that the employer has also prayed to quash and set aside the judgment and award passed by the Labour Court which was impugned before the learned Single Judge. The employer has not

impleaded the Labour Court as party as per the reported decision of this Court in Steel Authority of India's case (supra).

12. A Division Bench of this Court of which one of us (A.M. Kapadia, J.) was a member, in the case of Dilipbhai Maneklal Vyas v. Torrent Power A.E.C. Co., in Letters Patent Appeal No.1205 of 2006, vide order dated 18.6.2007 has held that if the petition is filed under Article 227 of the Constitution, intra-court appeal under clause 15 of the Letters Patent is not maintainable.

13. Therefore, in aforesaid view of the matter, according to us, the petition filed by the employer was essentially a petition under Article 227 of the Constitution. Therefore, this intra-court appeal filed at the instance of the employer under clause 15 of the Letters Patent is not maintainable.

14. Seen in the above context, the appeal deserves to be dismissed as it is not

maintainable.

15. As the appeal is not maintainable, it is dismissed with no order as to costs.

16. As the appeal is dismissed, the Civil Application is also rejected with no order as to costs. Rule is discharged.

(A.M. Kapadia, J.)

(Harsha Devani, J.)

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